APPENDIX A

EXCERPT FROM REPLY BRIEF OF APPELLANTS BEFORE THE FEDERAL CIRCUIT

(2) "Physical Delivery"—A Red Herring

Appellants have *not* insisted, anywhere in the record, including at Op. Br. 32 and/or Op. Br. 36-38, that *physical* delivery of the accused goods to a U.S. domiciliary is necessary to the consummation of a "sale for importation". Appellants' main brief *in context* argues that passing of title from the seller to the buyer of accused goods —which U.C.C. § 2-106(1) identifies as the hallmark of a sale—necessarily conveys to the buyer ownership and *control* over the goods, which may be regarded as a *constructive* delivery of the goods to the buyer.

To give a mundane, but clear example: If one visits a shop in, *e.g.*, Paris or Tokyo, selects and purchases an item and arranges for it to be sent to his or her home in the U.S., the shop has made a "sale for importation" into the U.S. The purchaser has taken ownership and control over the item by directing where physical delivery is to be made and the transaction can fairly be viewed as a *constructive* (but *not* physical) delivery to the buyer at the shop.